



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 26, 2016

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Nicholas Mencaroni**
Tax Registry No. 935306
Housing PSA 2
Disciplinary Case No. 2015-14776

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on July 13, 2016, and was charged with the following:

DISCIPLINARY CASE NO. 2015-14776

1. Police Officer Nicholas Mencaroni, assigned to the 115th Precinct, on or about November 22, 2015, while off-duty and in Queens County, consumed an intoxicant to the extent that Police Officer Mencaroni was unfit for duty.

P.G. 203-04, Page 1, Paragraph 1

FITNESS FOR DUTY

In a Memorandum dated September 8, 2016, Assistant Deputy Commissioner David S. Weisel found Police Officer Nicholas Mencaroni Guilty, after he pleaded Guilty, to the sole Specification in Disciplinary Case No. 2015-14776. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the issues and circumstances in this matter, and have determined that a penalty which includes Ordered Breath Testing is warranted. Therefore, it is directed that Police Officer Mencaroni be offered a post-trial negotiated agreement in which he shall forfeit thirty (30) suspension days (previously served), be placed on one (1) year dismissal probation and be made the subject of Ordered Breath Testing for that period, and continue to cooperate with counseling, as a disciplinary penalty. If Police Officer Mencaroni does not agree to the terms of this post-trial negotiated agreement, as noted, this Office is to be notified without delay.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

September 8, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Nicholas Mencaroni
Tax Registry No. 935306
Housing PSA 2
Disciplinary Case No. 2015-14776

Charges and Specifications:

1. Police Officer Nicholas Mencaroni, assigned to the 115th Precinct, on or about November 22, 2015, while off-duty and in Queens County, consumed an intoxicant to the extent that Police Officer Mencaroni was unfit for duty.

P.G. 203-04, Page 1, Paragraph 1 – FITNESS FOR DUTY

Appearances:

For the Department: Scott Rosenberg, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: John P. Tynan, Esq.
Worth, Longworth & London LLP
111 John Street, Suite 640
New York, NY 10038

Hearing Date:

July 13, 2016

Decision:

Guilty

Trial Commissioner:

ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on July 13, 2016. Respondent, through his counsel, entered a plea of Guilty and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, assessing the credibility of the witness, and Respondent having pleaded Guilty to the charges, the Court finds Respondent Guilty.

FINDINGS AND ANALYSIS

The charges against Respondent relate to an incident in which he was assaulted while intoxicated at a bar. Respondent indicated that on November 22, 2015, he went to the establishment, located in Queens County, while off duty and already having had some drinks. He had more to drink at the bar but was not sure what. He contended he was at this particular bar to meet friends that did not show, so he was in the process of leaving. He conceded, however, that he also was asked to leave by the staff. Respondent claimed he did not remember what occurred that led to him being asked to leave, only surmising that it was because he had too much to drink (Tr. 8-10, 12, 17-18).

Respondent testified that when he went to get a cab, an individual confronted him. Respondent walked away, but the individual punched him in the head and placed him in a chokehold. Police were nearby and responded, and arrested the individual. Respondent duly identified himself as a member of the Department, but the responding sergeant detected that Respondent possibly was intoxicated. A fitness for duty examination was conducted and Respondent was found to be unfit. He was suspended from duty (Tr. 8, 10-13).

Respondent stated that the Department ordered him to alcohol treatment. This consisted of both inpatient therapy for 30 days and outpatient therapy through the Counseling Services Unit for 18 weeks. The therapy sometimes was individual and sometimes as a group. [REDACTED]

[REDACTED]. There was urine testing as well. As of approximately two weeks before the mitigation hearing, the CSU had certified that Respondent successfully completed the Department's prescribed counseling program. Nevertheless, Respondent claimed in his testimony that he was not an alcoholic and did not have a drinking problem. [REDACTED] (Tr. 14-17, 23-25).

Respondent testified that he hurt his shooting hand during the incident. It still hurt five days later and he sought medical attention for it. He learned that he had fractured his wrist. As of the time of the hearing, it had not healed yet and required surgery. Because of that, and due to a prior [REDACTED] while on duty, he had been on sick leave and medical-restricted duty for some time (Tr. 8, 13-14, 23).

Yet, Respondent admitted, the instant matter was not his first unfitness case. In September 2011, Respondent pleaded guilty to arriving to an assigned Headquarters Security detail in August 2010 while unfit for duty due to the consumption of alcohol. He also pleaded guilty to impeding the investigation by telling the investigators he had come to work by public transportation, when in reality he had driven his personal vehicle. Respondent agreed to accept the Department's offer of the forfeiture of the 30 days he served on suspension, an additional 30 vacation days, the placement on one year of dismissal probation, submission to ordered breath testing, and cooperation with counseling. See Case No. [REDACTED].

In the instant matter, the Department suggested a penalty of the forfeiture of the 30 days Respondent served on suspension, the placement on one year of dismissal probation, submission to ordered breath testing, and cooperation with counseling. Respondent argued that the forfeiture

of the suspension days was a sufficient penalty and no further monitoring was necessary. He contended that he completed the CSU course of therapy, was the victim here, and through no fault of his own the incident led to him breaking his wrist, which was holding back his career. Respondent also argued that the Department was just looking to add the dismissal probation period to "feel good about itself" by giving him a higher penalty (Tr. 26-29).

Dismissal probation may be imposed where the officer's prior disciplinary record indicates that prior penalties have not led to improved conduct, or where the facts indicate that the officer again will engage in misconduct. See Case No. 2011-5299, pp. 9-10 (Dec. 17, 2012).

Probation is absolutely appropriate here. This is Respondent's second unfitness-by-alcohol case in a little over five years, in a career of a little over twelve years. The tribunal cannot credit Respondent's assertion that he does not have a drinking problem. These incidents are powerful evidence of that. Respondent's denial and dissembling, like his claim during the mitigation hearing that he was not really drunk when he appeared for duty in the August 2010 incident, and that supervisors just smelled alcohol on him from the night before (Tr. 18), only leads to the conclusion that he has not come to terms with his alcohol problem. This is the second time that his drinking has led to adverse employment consequences for him. It has led to poor decisions and at the very least factored into the police response to the bar. It is unfortunate that he was the victim of an assault, but that does not change the fact that he set the events in motion by getting drunk, so drunk that the management of the bar directed him to leave, leading to the altercation with the other individual. His status as the victim of a crime does not affect the necessity for dismissal probation here.

Although much was said about the concept of progressive discipline, it should be noted that the Department's proposed penalty is actually less what was imposed in the 2010 case, which included a specification for impeding the investigation. The Department signaled that it

had thought about adding a similar specification here, when it asked Respondent on cross examination whether he told the responding officers he was hit over the head with a pipe (Respondent answered that he did not recall saying that but acknowledged responding officers claimed he said it) (Tr. 18). The fact that the Department did not add this specification tends to refute Respondent's assertion that the Department is only interested in getting a more stringent penalty.

In any event, dismissal probation is supported by precedent here, especially in a second case of unfitness for duty by reason of intoxication by alcohol. *Case No.* [REDACTED] [REDACTED] is instructive. There, the member of service had pleaded guilty to a 2011 domestic incident involving alcohol consumption. Although he claimed that he was not under the influence when he got into a physical confrontation with his [REDACTED] that led to the police being called, he admitted that he previously had been drinking at a restaurant for several hours. He completed CSU's inpatient-outpatient therapy program and was restored to full duty.

One of that member's prior disciplinary cases, however, also involved alcohol. In 2008, he went out drinking while off duty but had to work the next day. He was too intoxicated to drive home, so he went back to work and tried to sleep it off in the lounge. He overslept and was found by a duty captain, still unfit for duty. Once again, the member completed the CSU program and returned to duty. He pleaded guilty to charges and specifications, forfeiting the time on suspension, an additional 30 vacation days, and was placed on one year of dismissal probation.

In the 2011 case, the member argued that he should not be subject to dismissal probation because, like Respondent argues now, he completed the therapy and was healthy. The tribunal rejected this argument, noting that this was his second unfitness case in a short period of time. Like Respondent here, that member denied that he had a drinking problem, in the face of strong

evidence to the contrary. The tribunal there could not credit the member's insistence that he would be fine in the future and imposed dismissal probation to ensure close monitoring and to reinforce the seriousness of the situation.

In sum, Respondent's prior misconduct in tandem with the instant proceeding is troubling enough that dismissal probation is warranted. This will ensure close monitoring of Respondent's future conduct and will serve to enforce the seriousness of these continuing breaches.

Accordingly, the Court recommends that Respondent be **DISMISSED** from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code §14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit the 30 days already served on suspension. Although this tribunal cannot impose ordered breath testing or continued cooperation with counseling as part of the penalty, as they are not contained in the list of authorized penalties in Administrative Code § 14-115 (a), the Police Commissioner has the authority to do so.

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER NICHOLAS MENCARONI
TAX REGISTRY NO. 935306
DISCIPLINARY CASE NO. 2015-14776

Respondent was appointed to the Department on July 1, 2004. His last three annual evaluations were as follows: Respondent received a 3.0 overall rating of "Competent" in 2015; a 4.5 rating of "Extremely Competent/Highly Competent" in 2014, and a 3.5 rating of "Highly Competent/Competent" in 2012. He has two medals for Excellent Police Duty. [REDACTED]

In 2011, Respondent pleaded Guilty to: (i) consuming an intoxicant to the extent he was unfit for duty upon arriving for duty at a Headquarters Security detail; (ii) consuming an intoxicant to the extent that he was unfit for duty while armed; (iii) failing to maintain his firearm with one round of ammunition in the chamber while on duty; (iv) being absent from his assignment by arriving an hour and 23 minutes late; and (v) impeding an official Department investigation by providing misleading answers at official interviews in stating that he took the Long Island Rail Road and a taxi to One Police Plaza when he had actually driven a vehicle. Respondent negotiated a penalty of 30 pretrial suspension days, 30 vacation days, one-year dismissal probation, cooperation with counseling and ordered breath testing. Respondent remained on dismissal probation from December 2011 through May 2013.

In connection with the instant matter, Respondent was suspended from November 22, 2015, to December 22, 2015, and his duty status was changed to modified thereafter. He also was placed on Level 1 Disciplinary Monitoring on March 23, 2016. That monitoring remains ongoing.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials